

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1557 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAJAN RATILAL PATEL

Versus

MADHURIBEN RAMENDRABHAI DESAI

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Appearance:

MR SHIRISH JOSHI for Petitioner

MR AR MAJMUDAR for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 22/12/97

ORAL JUDGEMENT

Heard Mr Shirish Joshi, learned Advocate for the petitioner and Mr A R Majmudar, learned Advocate for the Caveator-respondent.

This is a tenant's Revision under section 29 (2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'the Act of 1947') against

the order of the 6th Extra Asstt. Judge, Vadodara dated 16.9.1997 whereby the learned Judge confirmed the decree passed in R.C.S. No.160/89 passed by the learned Judge, Small Causes Court, Vadodara.

2. The plaintiff-Madhuriben Desai filed a rent suit being R.C.S. No.160/89 in the Small Causes Court, Vadodara seeking decree for eviction on the ground under section 13 (i)(g) of the Act. Her husband who was serving in Godrej Company in Delhi since 1958, was provided Residential accommodation by the Company, but on retirement they have vacated the said premises of the company. Before retirement of her husband in the year 1988, she wrote a letter to the tenant stating that her husband wishes to pass his remaining life at their native place at Vadodara and it would not be possible for them to stay at Delhi after retirement. Thus, a request was made to vacate the premises. The defendant-tenant did not accede to the plaintiff's request and as such, on retirement of her husband on 6.4.88, they were compelled to stay back in Delhi in a rented premises, on monthly rent of Rs.1700/- per month. The further say of the plaintiff is that because of the old age, they cannot bear the severe hot and cold climate of Delhi. It is not possible for them to further stay at Delhi. According to the plaintiff, the defendant-tenant is doing the business of construction work. He has earned lot of money in construction work, as such he is a person of sound financial condition.

2. The petitioner-defendant contested the suit. It is stated that the plaintiff did not require the suit premises for bonafide residential purpose. It was also averred that the defendant has no house in his possession in Vadodara, and therefore, if he is asked to vacate the suit premises, he will suffer greater hardship.

3. The trial court framed issue at Exh.14 and decided the issue of reasonable and bonafide requirement and comparative hardship in favour of the plaintiff and decreed the suit. The finding has been confirmed by the Appellate Court.

4. Mr Shirish Joshi, learned Advocate for the tenant submits that the finding on comparative hardship is perverse as the same is based on certain presumptions. He has invited my attention to paras 31 and 32 of the judgment of the trial court. The Court found that the defendant is carrying on business in a construction company in the name of Vimal Construction. The defendant is son of a retired Superintending Engineer, P.W.D.

Considering some other facts, the learned Judge arrived at the conclusion that the financial condition of the original defendant must be presumed to be sound, and therefore, the original defendant will not suffer greater hardship if he is ordered to vacate the suit premises. Reading the said finding, Mr Joshi, learned Advocate submits that there is absolutely no basis for arriving at the conclusion. Simply because father of the defendant was a Superintending Engineer at one time, it cannot be said that he is getting job under the influence of his father and as such his financial condition is good.

5. I have considered the contention of the learned Advocate. It is not in dispute that the plaintiff's husband has retired 9 years back i.e. in the year 1988. Since then they have been compelled to stay in a rented premises. In spite of the fact that the plaintiff made a request to defendant to make their house available, as they intend to pass evening of their life in their own house in their native town, they have been kept busy in prolonged litigation, shuttling between Delhi, Vadodara and Ahmedabad. The requirement of premises for settling on retirement from service in itself is reasonable and bonafide.

6. The question of comparative hardship under section 13(2) of the Bombay Rent Act, the Court is not only required to consider the situation from the view point of the tenant alone, but also to consider the situation from the view point of the landlord. Each party is required to show what hardship would be caused to him by granting or refusal of the decree. It would be unfair to ask a man to occupy rented premises when his own premises are available. Now a days number of housing schemes at different levels are available. Convenient loans by Banks, other Institutions and employers are also available. There are schemes for rented premises as well. The tenant is simply not required to show only the inconvenience which he may suffer in the case where the decree for eviction is passed, but he must also show his financial position and further whether he made any effort to have his own house.

7. In the instant case, the hardship to plaintiff is apparent inasmuch as that in spite of the fact that after retirement, they want to settle in their own house, they have been compelled to stay at a long distance in Delhi in a rented premises. On the other hand, the petitioner-tenant has not led any evidence to show that he made any effort for purchase or construction of his own house. No evidence has been produced to show his

financial condition. It is not in dispute that the defendant is carrying on the business of a construction company. In such a situation, the Court below has not committed any error, and if any inference is drawn with respect to financial condition of the petitioner, particularly when he has not led any evidence about his financial condition. Thus the finding of fact arrived at by both the courts below based on oral and documentary evidence supported by cogent and convincing reasons, and based on sound and settled legal position, does not call for interference by this Court in exercise of powers under section 29(2) of the Bombay Rent Act.

8. Before parting with, I may remind the right to assistance at the evening of life of a citizen assured under Article 41 of the Constitution. Persons above the age of 65 years are senior citizens. Thus keeping in view the hardships faced by the employees on retirement with respect to housing problem, it is desirable that they are treated as specified landlord and a provision like section 13 A A is introduced for their benefit. Requirement of premises for own use or for members of the family within 5 years of the retirement, must be construed reasonable and bonafide. Suit based on such requirement should be decided with promptness, so that retiring employees may plan his post retirement life well in advance and he may comfortably settle in his own house on retirement.

9. In view of the aforesaid, there is no merit in this Application and the same is accordingly rejected. However, on the request of Mr Shirish Joshi, learned Advocate for the petitioner, in the facts of the case, I direct that the impugned decree shall not be executed for a period of six weeks on the condition that the petitioner files an undertaking before this Court to the effect that he will hand over vacant possession of the suit premises to the landlord-respondent on or before the said period and he will not transfer, alienate the demised premises or induct anybody else in the said premises and further pay the mesne profit to the respondent. Two weeks time is allowed for submitting the undertaking.

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msp.